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February 12, 2021

Via Electronic Mail

Mark Draper, Chair
c/o Bill Hinkel, Executive Analyst
Maine Board of Environmental Protection
17 State House Station
28 Tyson Drive
Augusta, Maine 04333-0017

Re: Request to Reconsider Order on Supplemental Evidence in Appeal of Jeff Spinney NRPA Permit (#L-28397-4E-A-N)

Dear Chair Draper,

I am writing on behalf of appellants Carol Ervin, Allen Philbrick, and William Weary (“Appellants”) to request that you reconsider your denial of two specific pieces of supplemental evidence relevant to the above-referenced appeal. I apologize for the lateness of this request, but the Appellants have only asked me to represent them in this appeal as of this week.

In your January 25, 2021 Order denying all the Appellants’ proposed supplemental evidence, you found that none of the evidence was relevant or material, in part because “it relates to town planning board and appeal board proceedings that do not bear on the Board’s review of the Commissioner’s decision.” The Appellants, acting pro se at the time of their request, failed to bring to your attention why the following two documents are highly relevant to the Department’s permitting requirements and to this appeal before the Board.

1. Email dated November 28, 2020, from Jeff Spinney to Alna Planning Board Chair Jim Amaral and Planning Board members Joel Verney and Beth Whitney

In this email (attached), Mr. Spinney states that his boat ramp “has nothing to do with my club” and “has nothing to do with the club at all.” This relates directly to Appellants’ argument on appeal that Mr. Spinney’s boat ramp does not meet the Department’s “shared use” policy under the Natural Resources Protection Act.

During the permitting process, Department staff informed Mr. Spinney that he would very likely not get a permit for an individual use boat ramp. As a result, Mr. Spinney created an

entity called the Golden Ridge Sportsman's Club ("GRSC") to satisfy the Department that the ramp would be a shared use structure. Section 6(A) of the NRPA permit states that "the purpose of the proposed boat ramp is to provide safer and more reliable access for the club members' motorized boats being launched from trailers."

Mr. Spinney's categorical disavowal of any relationship between his boat ramp and the GRSC that is contained in the requested supplemental evidence is therefore highly relevant and material to Department permitting standards and this appeal. The November 28, 2020 email was created after the DEP license issuance and after the deadline for appeal to the Board. The email is an ex parte communication from Mr. Spinney to members of the Alna Planning Board, which Appellants only obtained on December 14, 2020 through a Freedom of Access Act request. The email could not have been brought to the Board's attention earlier in this process.

Accordingly, the email meets the test for admissible supplemental evidence under 06-096 CMR 2(24)(D)(2) and is critical to Appellants' appeal and the Board's review.

2. January 6, 2021 Settlement Agreement between Jeff Spinney and Town of Alna

In this settlement agreement (attached), the GRSC was prohibited from using Mr. Spinney's boat ramp to launch motorized boats. Specifically, under the executed agreement Mr. Spinney is required to provide proof that "the License from Spinney to the Golden Ridge Sportsmans Club has been modified to authorize the Club's use of the dock and boat launching area on the property for non-motorized boats only."

As noted above, Mr. Spinney's NRPA permit is premised on the Department finding that "the purpose of the proposed boat ramp is to provide safer and more reliable access for the club members' motorized boats being launched from trailers." The fact that club members are prohibited from launching motorized boats from Mr. Spinney's ramp undercuts both the Department's finding of shared use and the validity of Mr. Spinney's alternatives analysis under DEP Chapter 310 rules.

Under Chapter 310, the applicant must analyze "whether a less environmentally damaging practicable alternative to the proposed alteration, which meets the project purpose, exists." 06-096 CMR 310(9)(A). One alternative could be "Reducing the size, scope, configuration or density of the project as proposed, thereby avoiding or reducing the wetland impact." *Id.* Because the GRSC will not be trailering motorized boats into the river, Mr. Spinney's engineered stone boat ramp is no longer needed to meet the project purpose.

The settlement agreement executed on January 6, 2021 is highly relevant and material and could not have been brought to the Board's attention earlier. Accordingly, the agreement meets the test for admissible supplemental evidence under 06-096 CMR 2(24)(D)(2) and is critical to Appellants' appeal and the Board's review.

On behalf of the Appellants, I respectfully request that you admit these two items of supplemental evidence into the record before the Board in this appeal.

February 12, 2021

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Thank you very much for your attention. I apologize again for this request coming so near to the scheduled hearing date. I make it as promptly as circumstances allow.

Sincerely,

A handwritten signature in blue ink that reads "Gordon R. Smith". The signature is written in a cursive style with a large initial "G" and "S".

Gordon R. Smith

Enclosures

cc: Bill Hinkel
Peggy Bensinger, Esq.
Kristin Collins, Esq.
Ruth Ann Burke
Dawn Hallowell
Jami MacNeil

From: "Spinney, Jeffry" <Jeffry.Spinney@LibertyMutual.com>
Subject: Smith letter involving Whitney and Verney bias
Date: November 28, 2020 at 10:16:48 PM EST
To: Jim Amaral <jim.f.amaral@gmail.com>
Cc: "jwlim99@yahoo.com" <jwlim99@yahoo.com>, Beth Whitney
<bwhitney2287@gmail.com>

Jim,

I see that you have directly received yet another letter from an opponent's attorney, Gordon Smith, (I have attached a copy) dated November 17.

As you can see from the letter, the current attack against me is now an attempt to improperly disqualify both Beth Whitney and Joel Verney from the planning board regarding my current application. I have made a few comments/explanations (numbered into sections to make easier to discuss as necessary) below regarding many of the points that you should consider before acting in any way on this letter from attorney Smith:

1.) Joel Verney bias - The copies of corporate filings Gordon cites that included Joel are simply outdated records. Such paperwork is filed annually with the State and i haven't yet filed the updated ones as they are not yet due and i have no reason to file paperwork before its required due date.

You may not be aware, but back at the time of the letter to editor was published, there was an unfortunate incident against Joel Verney as well as a some others in town who also signed that letter (note approx. 105 Alna residents signed that very letter, again not submitted or created by me) shortly after it was published where somebody was making threats against them and leaving things in mailboxes, the police were called and investigated the incidents. Specifically, as a result of that threat, Joel contacted me and resigned from any involvement in my club thus making the claim that he is either a beneficiary and/or co-applicant moot. As you can see, his only act related to the club was being a signatory on some initial paperwork in support of the DEP application for a past project. I believe that was back at the time of the letter to editor.....so approx. 5 or 6 months before he (Joel) was ever brought onto the planning board by the board of Selectmen. The State's stored paperwork that Gordon is just now showing you (but which he has had in his possession for some time as it is public record he is and has been well aware of) simply hasn't caught up with the times.

There is no legitimate claim of real or meaningful perceived bias here when you consider these facts and any short term association from the past. Even if there is a claim of perceived bias, the legal process of the board has already executed as the board voted on his fitness to serve

Simply put, there is no do over option available at this point. The only process available to the opponent at this point is an appeal of a future decision.

2.) Even if there is considered to be a remotely perceived association to the club, meaning the above facts are rejected for some reason, **the application in the planning board's current consideration has nothing to do with my club** to begin with, so despite any opponents 'feelings' to the contrary, the chairman (and the board) cannot make legitimate decisions, regarding this application, based on that irrelevant info to begin with. The entire legal argument about the club by opposing parties was but one attempt to consider it commercial, thus invoking other ordinances, and that attempt failed with the legal review and subsequent decision provided by the town attorney after much consideration and ultimately accepted/voted on by the selectmen many months ago.

To summarize: Joel Verney clearly stated his position after your questioning, just like every other member of the board, and the board voted positively to allow him to participate per its published bylaws. There is no 'redo' because opponents don't like something that occurred in the past (any short term association with the initial club board during formation) **or the current reality that the current project has nothing to do with the club at all.** Again, the board voted on this matter as required, there is no do-over or take back. It is supported by fact.

There is a legal process for opponents to appeal any future decision if they so desire.

3.) As you surely must know by now, you would be hard pressed to find somebody in town at this point who hasn't expressed an opinion one way or the other in this whole fiasco, the opposition can't just claim perceived bias based on things not directly related to the application in question in hopes to render the board from being able to approve something legitimate.

Alternatively, if we really want to start a witch-hunt seeking out potential bias, one might also have to consider any association and modest financial donations that you and your wife & board alternate Willard Morgan and his wife, and possibly others, have made to Midcoast Conservancy. This private group certainly appears to have selective bias regarding any projects in and along the Sheepscot River (e.g. their own projects have no resistance, and in some cases don't even have proper permitting where required, while others in the community attempting to gain proper permitting get excruciating scrutiny and resistance).

One might also consider the fact that you acting as chair publicly stated in a recorded meeting that you believe your job as a planning board member is to 'protect the river' when it clearly is not. Just as it is not within your official role as chair to instruct the

board to 'disregard' a letter provided by the CEO under his authority, and included in my submission of information. As the board chair, you are not a judge and carry no such authority, you are simply a facilitator of the meeting to keep it moving along in an organized and efficient manner. Nothing more. These apparent misunderstandings of both your personal, and the board's scope of authority, could all be claimed to be evidence of significant bias should it continue.

The duly authorized regulatory authorities at the state and federal levels exist to protect the environment (and subsequently the river) based on actual science, not feelings, or individual/group collective opinion. The town planning board's job is to apply the local ordinance, as written, in a uniform and non-discriminatory manner regardless of member's personal feelings or opinion on a particular project or applicant.

As the past chair and member for many years, I personally have set aside feelings and voted for various projects that I personally didn't like, but that the ordinance(s) allowed, that's simply the way it is. Board members (including the chair) do not have the authority to consider things not written specifically in the ordinance (e.g. whether or not they think a project is 'necessary' to the applicant, or their personal view regarding the application, etc.), doing so would be acting in an improper manner and would open both the individuals and the town to certain legal liability as a result.

4.) Beth Whitney bias - expressing an opinion on either a previous project when she wasn't on the board at the time or by signing and supporting a petition for a general zoning change to prevent future misinterpretation by novice board members, neither of which are related to me has nothing to do with bias on my project.

The Facebook discussion Gordon included and cites also has nothing to do with my project directly. I recall that discussion vividly, you only see a small portion of it...I know because I participated too. Initially I, and subsequently she as another person with knowledge of the facts, was simply attempting to get people to understand the actuality of the items they were discussing/accusing in public forum. It was clear that some of the parties involved seem to have no fact based understanding of our ordinances or the situation and history that was grounded in reality. At that time, the ongoing argument was about the dock and boat ramp and shooting range and such.

As you know, the dock is no longer up for discussion at any level, nor is the shooting range, nor is any other perceived amenities so called by opposition in their various arguments.

As you well should know, and Beth Whitney was trying to explain that 'functionally water dependent uses & structures' are allowed by exception (see section 15c) in our existing shoreland zoning ordinance with the proper state and fed permitting (known as the NRPA). Ultimately, in my previous case...a superior court judge will likely determine that just as other functionally water dependent structures and uses have been allowed for 25+ years. The only confusion on that point seems to be with a small subset of the

current board who inappropriately were pressured and misapplied the ordinance.

The conversation Beth Whitney was engaged in with the folks on Facebook, (the full conversation in its entirety, not just the small portion you were provided and exists on the moderated Facebook page maintained by one or more of my opponents) appears to reflect the simple facts of the matter based on her many years of experience regarding what is and is not allowed based on ordinance within the Town of Alna and her personal knowledge of all of those projects.

As it has been said, the chances of finding somebody without an opinion in a small town at this point are slim. Everybody has an opinion on things, that doesn't necessarily mean there is bias. Most people can set their opinions aside and look at the ordinance and apply it consistently, i can say that i had to do this many times over the years as the chair. The ordinance overrides personal opinion and feeling, you need to remember that.

Regardless, the board already discussed the issue re: Beth and the letter to the editor and the Hilton SZO petition and took the necessary legal action to legitimize her participation (a positive vote by board members), the board voted and determined it was not an issue.

I suppose that it is possible that Attorney Smith may not realize, this is already 'done' and will not be revisited or redone. But it is more likely that he is just trying to bully the unrepresented board in a Hail-Mary move hoping for you or them to make a misstep that benefits him.

Either way, at this point, the recourse that attorney Smith and his clients have is to possibly appeal a future decision, not redo the voting that has already been done in the legal manner as specified by the planning board bylaws, section 4.1.3.

5.) Finally, regarding the various legal citations to court cases (and any conclusions he draws)....attorney Smith makes reference to in his letter, my attorney will be happy to take those up against the counsel as necessary in court should they choose to appeal any future decision, the planning board has no authority or capability to interpret these with any semblance of accuracy and therefore they should not be factored into any planning board decision.

Should you have any questions, certainly feel free to give me a call directly to clarify.
207-215-5230.

Otherwise, I expect that we will be moving to a conclusion in a timely fashion as is required by our shoreland zoning ordinance at the board's next meeting during the week of Dec 7th.

-j

SETTLEMENT AGREEMENT

This Settlement Agreement (“Agreement”) is made on the dates below noted, by and between Jeffrey Spinney (“Spinney”), the Town of Alna (“Town”), and Allen Philbrick, Jeffrey Philbrick, Carol Ervin, Bailey Bolen, Catherine Johnson, Edward Pentaleri and William Weary (collectively, “Neighbors”).

WHEREAS, Jeffrey Spinney is the owner of property located at Map R4, Lot 21A in the Town of Alna (“the Property”);

WHEREAS, Spinney received approval in 2020 from the Maine Department of Environmental Protection (“DEP”), Army Corps of Engineers, and other State agencies for a proposed reconstruction of a boat launching area and placement of a permanent dock on the Property (see DEP permit # L-28397-4E-A-N dated March 13, 2020);

WHEREAS, Neighbors Allen Philbrick, Ervin, Bolen and Weary appealed the decision of the DEP to the Maine Board of Environmental Protection, which appeal remains pending as of the date of this Agreement;

WHEREAS, Spinney applied to the Town Planning Board in March 2020 for approval of the above permitted work pursuant to the Town of Alna Shoreland Zoning Ordinance, but during the review process modified the request both with the State and the Town to remove the elements pertaining to the permanent dock (the project as so modified shall be hereinafter referred to as “the Project”);

WHEREAS, the Project failed to receive approval by vote of the Planning Board dated July 7, 2020 and vote on reconsideration dated July 27, 2020;

WHEREAS, Spinney appealed the Planning Board’s decision to the Town Board of Appeals, which upheld the Planning Board’s decision by written decision dated October 23, 2020;

WHEREAS, Spinney requested mediation through the Lincoln County Superior Court pursuant to the Land Use Mediation program, 5 M.R.S. § 3341, which has placed an automatic stay on the deadline for Spinney to appeal the Planning Board’s decision to the Superior Court;

WHEREAS, in November 2020, Spinney applied for a new permit from the Planning Board that sought to perform the Project with the addition of a temporary roll-out mat on top of the earthwork described in the DEP permit;

WHEREAS, the Planning Board on December 10, 2020 voted to approve Spinney’s new application, but is not expected to adopt formal findings of fact until its meeting on January 5, 2020;

WHEREAS, following mediation conducted pursuant to 5 M.R.S. § 3341 the parties wish to resolve all disputes and potential avenues of appeal regarding the Project;

NOW, THEREFORE, the Parties as named above hereby agree as follows:

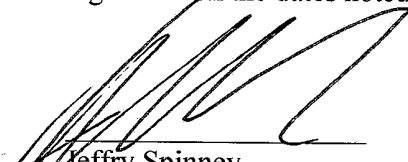
1. Spinney may construct the Project and use it for the purposes of a boat launching and water access ramp, as outlined in the DEP permit and in the applications to the DEP and Alna Planning Board. For so long as Spinney owns the Property and subject to the possibility for use by the Golden Ridge Sportsmans Club as set forth in Paragraphs 2(c) and 3, the use of the launch area shall be restricted to residential use. Such use precludes any commercial or organized group use, such as by a club or membership organization. Spinney may not assign any rights granted by any permit pertaining to the launch area. The intent of the parties is that Spinney shall continue to use the launch area as he has customarily and previously done during his ownership of the property
2. The Town, Spinney, and Neighbors will present the following jointly approved findings to the Planning Board at its meeting on January 5, 2020 and ask that they be formally incorporated into the Planning Board's findings of fact for the application approved on December 10, 2020:
 - a. The applicant has agreed to relinquish the component of the application pertaining to placement of a 15' seasonal rollout mat structure for use to support the launching of boats, and that part of the application is deemed abandoned.
 - b. The applicant may, upon completion of the excavation, earthwork and erosion control described in the application, use the completed project for the launching of motorized and unmotorized boats as well as components for the permitted temporary dock on the property.
 - c. As a condition of approval, the applicant shall, within 7 days of the date of these findings, submit to the Planning Board and Code Enforcement Officer proof that the License from Spinney to the Golden Ridge Sportsmans Club has been modified to authorize the Club's use of the dock and boat launching area on the property for non-motorized boats only and to limit annual membership in the club to no more than 10 members. These limitations shall remain in perpetuity so long as Golden Ridge Sportsmans Club holds a license to use these facilities. Should either of these limitations be deemed by DEP as a violation of its condition of approval requiring the license to Golden Ridge Sportsmans Club, the Planning Board shall replace it with another condition that places reasonable restrictions on use by the Club to prevent overburdening of the facilities and undue adverse impacts on the River.
 - d. As a condition of approval, the applicant shall, within 7 days of the date of these findings, present evidence to the Planning Board and Code Enforcement Officer that the Bylaws of the Golden Ridge Sportsmans Club have been modified to provide that Jeffry Spinney (or his heirs or successors in title) shall be President of the Club in perpetuity.

- e. Consistent with the statement of intent in Section 1, this condition shall not limit the ability of the applicant and his bona fide friends, family and guests from using the dock and boat launching area for motorized boats.
3. Bolen, Ervin, Philbrick and Weary, in cooperation and jointly with Spinney, shall within 14 days of executing this Agreement request that the Department of Environmental Protection and/or Board of Environmental Protection modify the March 13, 2020 permit, as acceptable to the Army Corps of Engineers to eliminate any requirement of shared use by Golden Ridge Sportsmans Club or any other persons or entity.
4. If DEP/BEP releases the requirement for the Golden Ridge Sportsmans Club, Spinney shall take action to dissolve the corporation within 14 days of receipt of DEP/BEP approval. If DEP/BEP will not remove the requirement for such shared use, Spinney agrees to comply with the conditions as set forth in Paragraph 2(c).
5. Upon submission of the revised License and Bylaws as described in Sections 2(c) and (d), which shall be copied to the Neighbors, and the filing of the joint request as set forth in Paragraph 3, Bolen, Ervin, Philbrick and Weary shall file a Notice of Dismissal of their appeal with the Board of Environmental Protection.
6. Upon execution of this Agreement, the parties shall take any actions necessary to assist in the mediator's submission of a mediation report to the Lincoln County Superior Court in accordance with 5 M.R.S. § 3341(12).
7. Spinney shall relinquish all rights of appeal of the decisions of the Town Planning Board and Board of Appeals as described above.
8. Neighbors shall relinquish all rights of appeal of the decisions of the Town Planning Board and Board of Appeals as described above.
9. Neighbors agree not to file or support the filing of any appeal, independent action or challenge to local, state or federal permits issued or to be issued for the Project.
10. The Parties agree to bear their own costs and expenses, including but not limited to legal fees and expert fees and costs, of all actions and appeals settled by this Agreement.
11. This Agreement has been negotiated and executed in the State of Maine, and shall be construed and governed under the laws of the State of Maine. The Parties agree that the State of Maine has a natural and substantial connection and relationship to the parties and transactions contemplated by this Agreement.
12. This Agreement constitutes the entire agreement between the Parties with respect to the matters set forth herein. The Agreement contains the essential terms of the agreement, and supersedes any and all other agreements, understandings, negotiations, or discussions, either oral or in writing, express or implied, between the Parties. The Parties each acknowledge that: (a) no representations, inducements, promises, agreements, or

warranties, oral or otherwise, have been made by them, or anyone acting on their behalf with regard to the Project which are not expressed in writing in this Agreement; (b) they have not executed this Agreement in reliance on any such representation, inducement, promise, agreement, or warranty; and (c) no representation, inducement, promise, agreement, or warranty with respect to the Project that is not contained in this Agreement, including, without limitation, any purported supplements, modifications, waivers, or terminations of this Agreement, shall be valid or binding, unless executed in writing by the Parties.

13. The Parties acknowledge that: (a) this Agreement and its reduction to final written form is the result of good faith negotiations between the Parties; (b) said Parties and their respective counsel have carefully reviewed and examined this Agreement before execution on behalf of said Parties; and (c) any statute or rule of construction that ambiguities are to be resolved against the drafting Party shall not be employed in the interpretation of this Agreement.
14. Each of the Parties hereto agrees to take any and all actions reasonably necessary in order to effectuate the intent, and to carry out the provisions, of this Agreement.
15. The Parties agree that any lawsuit or motion to enforce the terms of this Agreement shall be brought without request for a jury in the Maine Superior Court.
16. This Agreement may be executed in multiple counterparts, each of which shall constitute an original, but all of which shall constitute one and the same agreement. Failure of any named party to execute this Agreement shall have no effect on the binding nature of the Agreement as to the parties who do execute it. To the extent this Agreement requires an action to be taken individually by, or in conjunction with, a party who does not execute the Agreement, the requirement shall be void.
17. The effective date of this Agreement is the last date on which it was executed by a signatory to the Agreement.
18. The Town's acceptance of this Agreement is conditioned upon Mr. Spinney receiving any and all permit modifications deemed necessary by the DEP and/or the Army Corp of Engineers.

Agreed to on the dates noted below.



Jeffrey Spinney
Dated: 1/6/21

NEIGHBORS

Bailey Bolen
Dated: _____

Carol Ervin
Dated: _____

Catherine Johnson
Dated: _____

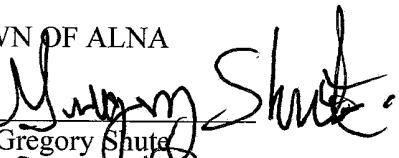
Allen Philbrick
Dated: _____

Jeffrey Philbrick
Dated: _____

William Weary
Dated: _____

Edward Pentaleri
Dated: _____

TOWN OF ALNA

By: 
Gregory Shute

By: 
Douglas Baston

Members of the Board of Selectmen
Duly authorized